

PUBLIC RIGHT-OF-WAY USE AGREEMENT

This **PUBLIC RIGHT-OF-WAY USE AGREEMENT** ("**Agreement**") is hereby made and entered into by and between the **CITY OF FORT WORTH**, a home rule municipal corporation organized under the laws of the State of Texas and acting by and through its duly authorized Assistant City Manager (the "**City**"), and _____, a _____, acting by and through its duly authorized _____ (the "**Company**").

The following statements are true and correct and constitute the basis upon which the City of Fort Worth has executed this Agreement.

A. Company wishes to use Public Rights-of-Way for the installation, operation, maintenance, repair, and replacement of infrastructure related to the provision of wireless communications services. Because Company is not a public utility, as that term is used in the City Charter and City Code, Company is not required to obtain a franchise from the City; however, Company is required to obtain the City's consent pursuant to a license agreement that sets forth the terms and conditions under which Company may use the Public Right-of-Way.

B. The City has reviewed Company's request and agrees to grant Company a license to use certain Public Rights-of-Way in order to install, operate, maintain, repair, and replace Wireless Infrastructure, on the terms and conditions set forth herein, solely for the transportation of data and information services and solely in accordance with the terms and conditions of this Agreement.

Agreement

1. **DEFINITIONS.**

Capitalized terms used in this Agreement and not otherwise defined within this Agreement shall have the following meanings:

Affiliate shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

Agreement shall mean the authorization issued to Company hereunder to use the Public Rights-of-Way for (i) the construction, installation, maintenance and repair of Company's Wireless Infrastructure; (ii) the use of such Wireless Infrastructure for the transportation of data and information services; and (iii) any other directly related uses of the Public Rights-of-Way, pursuant to and in accordance with this Agreement.

City shall mean the area within the corporate limits of the City of Fort Worth, Texas and the governing body of the City of Fort Worth, Texas.

Commission shall mean the Federal Communications Commission or other authority succeeding to the regulatory powers of the Commission.

Company shall mean _____, a _____, only and shall not include any Affiliate or third party.

Customer shall mean any Person located, in whole or in part, within the City.

Director shall mean the Director of the City's Department of Transportation/Public Works Department or authorized representative.

Wireless Infrastructure shall mean fiber optic data lines and those authorized related appurtenances that are **specifically identified in Exhibit "B"** of this Agreement, which is attached hereto and incorporated herein for all purposes, as installed by Company in the Public Rights-of-Way in accordance with this Agreement.

Person shall mean, without limitation, an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust or any other form or business entity or association.

Public Rights-of-Way shall mean **only** those dedicated public streets, highways, alleys and rights-of-way in the City that are **identified in Exhibit "A"** of this Agreement, which is attached hereto and incorporated herein for all purposes.

2. **GRANT OF RIGHTS.**

2.1. **General Use of Public Rights-of-Way for Provision of Data and information services.**

Subject to the terms and conditions set forth in this Agreement and the City Charter and ordinances, the City hereby grants Company a license to (i) erect, construct, install and maintain its Wireless Infrastructure in, under, along and through **the subsurface** of Public Rights-of-Way and (ii) transport data and information services through the portions of its Wireless Infrastructure in, under, along and through the **subsurface** of Public Rights-of-Way. Company hereby acknowledges and agrees that this Agreement allows only the transportation of data and information services through the City and does not allow Company to distribute, sell or otherwise provide telephony services to any Customer.

2.2. **Nonexclusive.**

This Agreement and all rights granted to Company herein are strictly nonexclusive. The City reserves the right to grant other and future licenses and other

authorizations for use of the Public Rights-of-Way to other Persons and entities in accordance with applicable law and as the City deems appropriate; provided, however, that as to the grant of subsequent licenses for use of the same Public Rights-of-Way that is solely within the discretion of the City, if a dispute arises as to priority of the use of the Public Rights-of-Way, the City will resolve such dispute in a manner that does not result in unreasonable interference with Company's operation of the Wireless Infrastructure for the purposes provided for herein. This Agreement does not establish any priority for the use of the Public Rights-of-Way by Company or by any present or future licensees or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between licensees and other permit holders, as determined by the City in the exercise of its powers, including its authority as owner/trustee of the Public Rights-of-Way and the police power and other powers reserved to and conferred on the City by the State of Texas. It is understood that be execution of this Agreement, the City does not waive or surrender any of its governmental powers.

2.3. Other Permits.

This Agreement does not relieve Company of any obligation to obtain permits, licenses, and other approvals from the City or other regulatory agency necessary for the construction, installation, maintenance, or repair of Company's Wireless Infrastructure or the transportation of data and information services through such Wireless Infrastructure.

2.4. Bonds.

Prior to the commencement of any construction work in the Public Rights-of-Way in the City that requires a cut, opening, or other excavation, Company shall deliver to the City bonds executed by a corporate surety authorized to do business in the State of Texas and acceptable to the City in the proportional amount of the cost of work under the construction contract or construction project that will be performed in the Public Rights-of-Way. The bonds shall guarantee (i) satisfactory compliance by Company with all requirements, terms and conditions of this Agreement and (ii) full payments to all persons, firms, corporations, or other entities with whom Company has a direct relationship for the performance of such construction, maintenance, or repairs.

If any such construction, maintenance and repair work is undertaken by a contractor of Company, Company shall also require such contractor to deliver to Company bonds executed by a corporate surety authorized to do business in the State of Texas and acceptable to the City in the proportional amount of the cost of work under the construction contract or construction project that will be performed by the contractor in the Public Rights-of-Way. The bonds shall guarantee (i) the faithful performance and completion of all construction, maintenance, or repair work in accordance with the contract between Company and the contractor and (ii) full payment for all wages for labor and services and of all bills for materials, supplies, and equipment used in the

performance of that contract. Such bonds shall name both the City and Company as dual obligees.

3. TERM

This Agreement shall become effective on the date as of which both parties have executed it (“**Effective Date**”) and shall expire at 11:59 P.M. CST on _____, unless terminated earlier as provided herein.

4. FEES AND PAYMENTS TO CITY.

4.1. Right-of-Way Use Fee.

On or prior to the Effective Date, Company shall pay the City as compensation for its use of the Public Rights-of-Way for the Term of this Agreement the sum of _____ Dollars and _____ Cents (\$_____) (“**License Fee**”). Company hereby acknowledges and agrees that the amount of this License Fee constitutes just and reasonable compensation to the City for Company's use of the Public Rights-of-Way as provided by this Agreement

4.2. Other Payments.

In addition to the License Fee, Company shall pay the City all sums which may be due the City or other taxing entities for property taxes, license fees, permit fees, or other taxes, charges or fees that the City may from time to time impose on all other similarly situated entities within the City. Company shall reimburse the City for publication of this Agreement if required by the City's Charter.

4.3. Interest.

All sums not paid when due shall bear interest at the rate of ten percent (10%) per annum or the maximum amount allowed by law, whichever is less, computed monthly. If such outstanding sums are paid with interest within thirty (30) days following their respective due dates, Company's failure to pay such sums by their respective due dates shall not, in and of itself, constitute an Event of Default under Section 9 of this Agreement.

5. REGULATORY AUTHORITY OF THE CITY.

Company's property and operations hereunder shall be subject to such regulation by the City as may be reasonably necessary for the protection or benefit of the general public. In this connection, Company shall be subject to, shall be governed by, and shall comply with all applicable federal, state and local laws, including all ordinances, rules, and regulations of the City, as same may be adopted and amended from time to time.

6. USE OF PUBLIC RIGHTS-OF-WAY.

6.1. Compliance with Laws, Ordinances, Rules and Regulations.

The City has the right to control and regulate the use of the Public Rights-of-Way, public places, and other City-owned property and the spaces above and beneath them.

Company shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to, City ordinances, rules, and policies related to construction permits, construction bonds, permissible hours of construction, operations during peak traffic hours, barricading requirements, and any other construction rules or regulations that may be promulgated from time to time.

6.2. No Undue Burden.

The Wireless Infrastructure shall not be erected, installed, constructed, repaired, replaced, or maintained in any manner that places an undue burden on the present or future use of the Public Rights-of-Way by the City and the public. If the City reasonably determines that the Wireless Infrastructure does place an undue burden on any portion of the Public Rights-of-Way, Company, at Company's sole cost and expense and within a reasonable time period specified by the City, shall modify the Wireless Infrastructure or take other actions determined by the City to be in the public interest to remove or alleviate the burden.

6.3. Minimal Interference.

Prior to the undertaking of any kind of construction, installation, maintenance, repairs, or other work that requires the excavation, lane closure, or other physical use of the Public Rights-of-Way, Company shall, except for work required to address an emergency, provide at least twenty-four (24) hours' advance written notice to the owners of property adjacent to the Public Rights-of-Way that will be affected. In the case of emergencies Company shall provide notice to the affected landowners within twenty-four (24) hours after commencement of work. In addition, during any such work, Company shall provide construction and maintenance signs and sufficient barricades at work sites to protect the public. The use of such traffic control devices shall be consistent with the standards and provisions of Part VI of the then-current Texas Manual on Uniform Traffic Control Devices, as such document may be amended from time to time, or the standards and provisions of a successor Part or document. Company shall utilize appropriate warning lights at all construction and maintenance sites where one or more traffic lanes are closed or obstructed during nighttime conditions.

6.4. "As-Built" Plans and Maps.

Company, at Company's sole cost and expense, shall provide the City with as-built plans of all portions of the Wireless Infrastructure located in the City and the City's extraterritorial jurisdiction and maps showing such Wireless Infrastructure within ninety (90) calendar days following the completion of such Wireless Infrastructure. Company shall supply the textual documentation of such as-built plans and maps in computer format as requested in writing by the City and shall otherwise fully cooperate with the City in ensuring that the Wireless Infrastructure is accurately reflected in the City's mapping system.

6.5. Marking of Wireless Infrastructure.

If requested in writing by the Director, the Wireless Infrastructure shall be marked, in a manner that is acceptable to the Director, to show conspicuously Company's name and Company's toll-free telephone number and other contact information so that a Person may contact the Company for assistance.

6.6. Pavement Cut Coordination and Additional Fees.

The City shall have the right to coordinate all excavation work in the Public Rights-of-Way in a manner that is consistent with and convenient for the implementation of the City's program for street construction, rebuilding, resurfacing, and repair. In order to preserve the integrity of the Public Rights-of-Way, Company shall not cut, excavate or otherwise breach or damage the surface of any paved Public Right-of-Way within ninety-six (96) months following the construction or resurfacing of such Public Right-of-Way unless (i) Company obtains written consent from the Director and (ii) pays the City, for each fifty (50) linear feet of a cut, excavation or breach of any Public Right-of-Way or portion thereof, the sum of (a) \$1,500 for any cut, excavation or breach occurring between the Effective Date and the fifth anniversary of the Effective Date; (b) \$1,800 for any cut, excavation or breach occurring between the day after the fifth anniversary of the Effective Date and the tenth anniversary of the Effective Date; (c) \$2,150 for any cut, excavation or breach occurring between the day after the tenth anniversary of the Effective Date and the fifteenth anniversary of the Effective Date; and (d) \$2,600 for any cut, excavation or breach occurring between the day after the fifteenth anniversary of the Effective Date and the date on which this Agreement expires. Such fee is intended to offset the lost value and reduced integrity of the City's infrastructure related to Company's incursion and shall (i) be in addition to, and not in lieu of, Company's obligations to restore the Public Rights-of-Way in accordance with this Agreement and (ii) not be allocated or otherwise counted as part of the License Fee to the City.

6.7. Restoration of Public Rights-of-Way and Property.

Company, at Company's sole cost and expense, and in a manner approved by the City, shall promptly restore any portion of the Public Rights-of-Way, City-owned property, or other privately-owned property that are in any way disturbed or damaged by the construction, operation, maintenance or removal of any of the Wireless Infrastructure to, at Company's option, as good or better a condition as such property was in immediately prior to the disturbance or damage. Company shall diligently commence such restoration within thirty (30) calendar days following the date that Company first became aware of the disturbance or damage or, if the Wireless Infrastructure is being removed, within thirty (30) calendar days following such removal.

6.8. Relocation of Wireless Infrastructure.

Company acknowledges and agrees that the Public Rights-of-Way in which the Wireless Infrastructure is located may, during the term of this Agreement, be subject to additional projects by or on behalf of the City, including, but not limited to, street or other public excavation, construction, repair, grading, regrading, or traffic conditions; the installation of sewers, drains, water pipes, or municipally-owned facilities of any kind;

the vacation, construction, or relocation of streets or any other type of structure or improvement of a public agency; any public work; or any other type of improvement necessary, in the City's sole discretion, for the public health, safety or welfare. If the City determines in its sole reasonable discretion that the location of the Wireless Infrastructure conflicts with an Additional Project, the City may submit to Company a written Request for Accommodation, including, but not limited to, protecting, supporting, deepening, relocating, disconnecting, or removing all or any portion of the Company's Wireless Infrastructure within the Public Rights-of-Way. City covenants and agrees that it will only request disconnection or removal if the City finds that no other Accommodation is reasonably or economically feasible. Within forty-five (45) calendar days following City's written Request for Accommodation, Company, at Company's sole cost and expense, shall make the requested Accommodation. If Company reasonably requires more than forty-five (45) days to comply with the City's Request for Accommodation, Company shall notify the Director in writing, and the City will work in good faith with Company to negotiate a workable time frame.

6.9. Emergencies.

6.9.1. Work by the City.

For purposes of this Section 6.9.1, a public emergency shall be any condition which, in the opinion of the officials specified herein, poses an immediate threat to life, health or property and is caused by any natural or man-made disaster, including, but not limited to, storms, floods, fires, accidents, explosion, water main breaks, and hazardous materials spills. In the event of a public emergency, the City shall have the right to take whatever action is deemed appropriate by the City Manager, Mayor, Police Chief or Fire Chief, or their authorized representatives, including, but not limited to, action that may result in damage to the Wireless Infrastructure, and Company hereby (i) releases the City, its officers, agents, servants, employees and subcontractors from liability or responsibility for (A) any Damages, as defined in Section 7.1, that may occur to the Wireless Infrastructure or that Company may otherwise incur as a result of such a response and (B) any damages (including, but not limited to, lost revenue or profits) that may be incurred by the Company as a result of such a response, and (ii) agrees that Company, at Company's sole cost and expense, shall be responsible for the repair, relocation or reconstruction of all or any of its Wireless Infrastructure that is affected by such action of the City. In responding to a public emergency, the City agrees to comply with all local, state, and federal laws, including any requirements to notify the Texas One Call System, to the extent that they apply at the time and under the circumstances. In addition, if the City takes any action that it believes will affect the Wireless Infrastructure, the City will notify Company as soon as practicable so that Company may advise and work with the City with respect to such action.

6.9.2. Work by or on Behalf of Company.

In the event of an emergency that directly involves that portion of the Wireless Infrastructure located in the Public Rights-of-Way and necessitates immediate emergency response work or repairs, Company may initiate the

emergency response work or repairs or take any action required under the circumstances provided that Company notifies the City as promptly as possible. After the emergency has passed, Company shall apply for and obtain a construction permit from the Director and otherwise fully comply with the requirements of this Agreement.

6.10. Removal of Wireless Infrastructure.

Upon the revocation, termination, or expiration without extension or renewal of this Agreement, Company's right to use the Public Rights-of-Way under this Agreement shall cease and Company shall immediately discontinue the transportation of data and information services in or through the Wireless Infrastructure. Within six (6) months following such revocation, termination, or expiration and if the City requests, Company, at Company's sole cost and expense, shall remove the Wireless Infrastructure from the Public Rights-of-Way (or disconnect and abandon the Wireless Infrastructure, if consented to by the City), in accordance with applicable laws and regulations. If Company has not removed all of the Wireless Infrastructure from the Public Rights-of-Way (or disconnected and abandoned the Wireless Infrastructure, if consented to by the City) within six (6) months following revocation, termination, or expiration of this Agreement, the City may deem any portion of the Wireless Infrastructure remaining in the Public Rights-of-Way abandoned and, at the City's sole option, (i) take possession of and title to such property or (ii) take any and all legal action necessary to compel Company to remove such property; provided, however, that Company may not abandon its facilities or discontinue its services within the City without the approval of the Commission or successor agency or any other regulatory authority with such jurisdiction.

Within six (6) months following revocation, termination, or expiration of this Agreement and in accordance with Section 6.7 of this Agreement, Company shall also restore any property, public or private, that is disturbed or damaged by removal (or, if consented to by the City, disconnecting and abandoning) of the Wireless Infrastructure. If Company has not restored all such property within this time, the City, at the City's sole option, may perform or have performed any necessary restoration work, in which case Company shall immediately reimburse the City for any and all costs incurred in performing or having performed such restoration work.

7. LIABILITY AND INDEMNIFICATION.

7.1. Liability of Company.

Company shall be liable and responsible for any and all damages, losses, liabilities (joint or several), payments, obligations, penalties, claims, litigation, demands, defenses, judgments, lawsuits, proceedings, costs, disbursements or expenses (including, without limitation, fees, disbursements and reasonable expenses of attorneys, accountants and other professional advisors and of expert witnesses and costs of investigation and preparation) of any kind or nature whatsoever (collectively "**Damages**"), which may arise out of or be in any way connected with (i) the construction, installation, operation, maintenance or condition of the Wireless Infrastructure or any related facilities or appurtenances; (ii) the transportation of data and information services through the Wireless Infrastructure; (iii) any claim or lien arising out of work, labor, materials, or

supplies provided or supplied to Company, its contractors or subcontractors; or (iv) Company's failure to comply with any federal, state, or local law, ordinance, rule, or regulation, except to the extent directly caused by the negligent or grossly negligent act(s) or omission(s) or intentional misconduct of the City.

7.2. Indemnification.

COMPANY, AT COMPANY'S SOLE COST AND EXPENSE, SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, BOARDS, COMMISSIONS, AGENTS, REPRESENTATIVES, AND EMPLOYEES ("INDEMNITEES"), FROM AND AGAINST ANY AND ALL DAMAGES (INCLUDING, WITHOUT LIMITATION, THOSE FOR PROPERTY DAMAGE AND PERSONAL INJURY, INCLUDING DEATH) WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH (I) THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE, OR CONDITION OF THE WIRELESS INFRASTRUCTURE OR ANY RELATED FACILITIES OR APPURTENANCES; (II) THE TRANSPORTATION OF DATA AND INFORMATION SERVICES THROUGH THE WIRELESS INFRASTRUCTURE; (III) ANY CLAIM OR LIEN ARISING OUT OF WORK, LABOR, MATERIALS, OR SUPPLIES PROVIDED OR SUPPLIED TO COMPANY, ITS CONTRACTORS OR SUBCONTRACTORS; OR (IV) COMPANY'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE, OR LOCAL LAW, ORDINANCE, RULE OR REGULATION, EXCEPT TO THE EXTENT DIRECTLY CAUSED BY THE NEGLIGENT OR GROSSLY NEGLIGENT ACT(S) OR OMISSION(S) OR INTENTIONAL MISCONDUCT OF THE CITY.

7.3. Assumption of Risk.

Company hereby undertakes and assumes, for and on behalf of Company, its officers, agents, contractors, subcontractors, agents, and employees, all risk of dangerous conditions, if any, on or about any City-owned or City-controlled property, including, but not limited to, the Public Rights-of-Way.

7.4. Defense of Indemnitees.

In the event any action, lawsuit, or other proceeding is brought against any Indemnatee by reason of any matter for which the Indemnitees are indemnified hereunder, the City shall give Company prompt written notice of the making of any claim or commencement of any such action, lawsuit, or other proceeding, and Company, at Company's sole cost and expense, shall resist and defend the same with reasonable participation by the City and with legal counsel selected by Company and specifically approved by the City. In such an event, Company shall not admit liability in any matter on behalf of any Indemnatee without the advance written consent of the City.

8. INSURANCE.

Company shall procure and maintain at all times, in full force and effect, one or more policies of insurance to provide coverages of the types and amounts as specified herein and meeting all requirements of this Section.

8.1. Primary Liability Insurance Coverage.

- **Commercial General Liability:**

\$1,000,000 per occurrence

\$2,000,000.00 Aggregate

Such coverage shall include, but not be limited to, the following: (i) premises liability; (ii) independent contractors; (iii) products/completed operations; (iv) personal injury; (v) contractual liability; and (vi) explosion, collapse and underground property damage.

- **Property Damage Liability:**

\$10,000,000 per occurrence

- **Automobile Liability:**

\$1,000,000 per accident

Unless otherwise agreed in writing by the City's Risk Manager, this coverage must be in the form of a commercial business policy that provides coverage on "Any Auto," defined as autos owned, hired, and non-owned.

- **Worker's Compensation:**

As required by law; and, Employer's Liability as follows:

\$1,000,000 per accident.

8.2. General Conditions Applicable to Required Insurance.

Within ten days of the Effective Date of this Agreement and prior to commencement of any work in the Public Rights-of-Way during any term of this Agreement, Company shall ensure that certificates of insurance are delivered to the City of Fort Worth addressed to the attention of the Risk Management Division, 1000 Throckmorton Street, Fort Worth, Texas 76102 with a copy to the Director.

Deductible or self-insured retention limits on any line of coverage required herein shall not exceed \$10,000 in the annual aggregate unless the limit per occurrence, or per line of coverage, or aggregate is otherwise approved in writing by the City's Risk Manager.

The City's Risk Manager shall have the right to review and evaluate all required insurance coverage and to make reasonable requests or revisions pertaining to the types and limits of that coverage. Company and its subcontractors shall comply with such requests or revisions as a condition precedent to the effectiveness of this Agreement.

Each insurance policy shall be endorsed to provide the City a minimum thirty (30) days' notice of cancellation, non-renewal, and/or material change in policy terms or coverage, provided, however, that a ten day notice shall be acceptable in the event of cancellation for non-payment of premium.

The City and its officials, officers, employees, agents, servants, and volunteers shall be endorsed as an additional insured on each and every insurance policy required under this Agreement except Worker's Compensation.

All insurance policies required under this Agreement shall be endorsed with a waiver of subrogation in favor of the City. Insurers shall have no right of recovery of subrogation against City, it being the intention that the insurance policy shall protect all parties to the agreement and be primary coverage for all losses covered by the policies.

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by City, to any future coverage, or to City's self-insured retention of whatever nature.

Company's insurance policies shall each be endorsed to provide that such insurance is primary protection and that any self-funded or commercial coverage maintained by City shall not be called upon to contribute to loss recovery.

On the request of City, Company shall provide complete copies of all insurance policies required by this Agreement. Current and revised certificates of insurance shall be delivered to the Risk Management Division of the City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102 with copy to the Director.

Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.

Insurers must be authorized to do business in the State of Texas and have a current A. M. Best rating of A VII or equivalent measure of financial strength and solvency.

The City may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups in lieu of traditional insurance. Prior to employing such alternative coverage, the Company must obtain written approval from the City's Risk Manager.

City shall not be responsible for the direct payment of insurance premium costs for the Company's insurance. Company may be required to provide City with proof of insurance premium payments.

During any term of this Agreement, Company shall report to the City's Risk Management Division in a timely manner any loss occurrence that could give rise to a liability claim or lawsuit or that could result in a property loss.

The insurance requirements set forth in this Section and any recovery by the City of any sum by reason of any insurance policy required under this Agreement shall in no way be construed or effected to limit or in any way affect Company's liability to the City or other persons as provided by this Agreement or law.

Company shall not do or permit to be done anything in or upon any portion of the Public Rights-of-Way, or bring or keep anything therein or thereupon that will in any way conflict with the conditions of any insurance policy on the Public Rights-of-Way, or any part thereof, or in any way increase the rate of any fire insurance on the Public Rights-of-Way or on property kept therein, or in any way obstruct or interfere with the rights of other users of the Public Rights-of-Way, or injure or annoy them.

9. DEFAULTS.

The occurrence at any time during the term of this Agreement of one or more of the following events shall constitute an “**Event of Default**” under this Agreement:

9.1. Failure to Pay License Fee.

An Event of Default shall occur if Company fails to pay any License Fee on or before the respective due date.

9.2. Breach.

An Event of Default shall occur if Company materially breaches or violates any of the terms, covenants, representations, or warranties set forth in this Agreement or fails to perform any obligation required by this Agreement.

9.3. Bankruptcy, Insolvency or Receivership.

An Event of Default shall occur if Company (i) files a voluntary petition in bankruptcy; (ii) is adjudicated insolvent; (iii) files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; (iv) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, master, custodian, or liquidator of Company, any of Company's property or any revenues, issues, earnings, or profits thereof; (v)

makes an assignment for the benefit of creditors; or (vi) fails to pay Company's debts generally as they become due.

9.4. Violations of the Law.

An Event of Default shall occur if Company violates any existing or future federal, state or local laws or any existing or future ordinances, rules and regulations of the City.

10. UNCURED DEFAULTS AND REMEDIES.

10.1. Notice of Default and Opportunity to Cure.

If an Event of Default occurs on account of Company's failure to pay the License Fee in accordance with Section 9.1, such Event of Default shall be deemed an Uncured Default and the City shall have the right to terminate this Agreement immediately upon provision of written notice to Company. If an Event of Default occurs for a reason other than for failure to pay the License Fee, the City shall provide Company with written notice and shall give Company the opportunity to cure such Event of Default. For an Event of Default which can be cured by the immediate payment of money to the City, Company shall have thirty (30) days from the date it receives written notice from the City to cure the Event of Default. For any other Event of Default, Company shall have sixty (60) days from the date it receives written notice from the City to cure the Event of Default. If any Event of Default is not cured within the time period specified herein, such Event of Default shall, without further notice from the City, become an "Uncured Default" and the City immediately may exercise the remedies provided in Section 10.2.

10.2. Remedies for Uncured Defaults.

Upon the occurrence of an Uncured Default, the City shall be entitled to exercise, at the same time or at different times, any of the following remedies, all of which shall be cumulative of and without limitation to any other rights or remedies the City may have:

10.2.1. Termination of Agreement.

Upon the occurrence of an Uncured Default, the City may terminate this Agreement. Upon such termination, Company shall forfeit all rights granted to it under this Agreement, and this Agreement shall automatically be deemed null and void and shall have no further force or effect **except as to** Company's unperformed obligations and existing liabilities as of the date of termination and any provision that, explicitly or by necessary implication, survives termination. Company shall remain obligated to pay, and the City shall retain the right to receive License Fees and any other payments due up to the date of termination. Company shall remove the Wireless Infrastructure from and restore the Public Rights-of-Way as and when requested by the City. The City's right to terminate this Agreement under this Section 10.2.1 does not and shall not be construed to constitute any kind of limitation on the City's right to terminate this Agreement

for other reasons as provided by and in accordance with this Agreement; provided, however, that Company may not abandon the Wireless Infrastructure without the approval of the Commission or successor agency or other regulatory authority with jurisdiction, if such action without such approval is prohibited at the time by applicable federal or state law or regulation.

10.2.2 Legal Action Against Company.

Upon the occurrence of an Uncured Default, the City may commence against Company an action at law for monetary damages or in equity, for injunctive relief or specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable.

11. PROVISION OF INFORMATION.

11.1. Filings with the Commission.

Company shall provide copies to the City of all documents which Company files with or sends to the Commission concerning or related to its operations in the City, including, but not limited to, filings related to (i) tariffs; (ii) rules, regulations, and policies requested, under consideration or approved by the Commission; and (iii) applications and any supporting pre-filed testimony and exhibits filed by Company or third parties on behalf of Company, on the same date as such filings are made with the Commission. In addition, Company shall provide the City with copies of records, documents, and other filings that Company is required to maintain or supply to the Commission under any applicable state or federal law, rule, or regulation.

11.2. Lawsuits.

Company shall provide the City with copies of all pleadings in all lawsuits to which Company is a party and that pertain to the granting of this Agreement and/or the transportation of data and information services through the City within thirty (30) days of Company's receipt of same.

12. COMPANY AS INDEPENDENT CONTRACTOR.

It is expressly understood and agreed that Company shall operate as an independent contractor as to all rights and privileges granted by this Agreement and not as an agent, representative, or employee of the City. Company shall have the exclusive right to control the details of its business and other operations necessary or appurtenant to the transportation of data and information services in accordance with the terms and conditions of this Agreement, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. Company acknowledges that the doctrine of *respondeat superior* shall not apply as between the City and Company, its officers, agents, employees, contractors, and subcontractors. Company further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the City and Company.

13. ASSIGNMENT PROHIBITED.

Company may not assign or otherwise transfer any of its rights or obligations under this Agreement unless specifically authorized in writing by the City, which authorization shall not be unreasonably withheld. Notwithstanding the preceding sentence, Company may, without the City’s consent, assign its rights and obligations under this Agreement to an entity acquiring all or substantially all of Company’s assets whether through an acquisition, merger, or corporate restructuring. In the event of any such assignment, Company will notify City of the assignment prior to its completion or as soon thereafter as reasonably practicable.

14. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (i) hand-delivered to the other party, its agents, employees, servants or representatives, or (ii) received by the other party by United States Mail, postage prepaid, return receipt requested, addressed as follows:

To THE CITY:

City of Fort Worth
Public Utilities Administrator
1000 Throckmorton
Fort Worth, TX 76102

To COMPANY:

Attn: _____

with a copy to:

City of Fort Worth
Department of Law
Attn: Attorney for Utilities
1000 Throckmorton
Fort Worth, TX 76102

15. NON-DISCRIMINATION COVENANT.

Company shall not discriminate against any person on the basis of race, color, national origin, religion, handicap, sex, sexual orientation, familial status, transgender, gender identity or gender expression in the receipt of benefits from Company’s business operations, in any opportunities for employment with Company or in the construction or installation of the Wireless Infrastructure.

16. NO WAIVER.

The failure of the City to insist upon the performance of any term or provision of this Agreement or to exercise any rights that the City may have, either under this Agreement or the law, shall not constitute a waiver of the City's right to insist upon appropriate performance or to assert any such right on any future occasion.

17. GOVERNING LAW AND VENUE.

This Agreement shall be construed pursuant to and in accordance with the laws of the United States of America and the State of Texas. If any action, whether real or asserted, at law or in equity, arise out of the terms of this Agreement, Company's transportation of data and information services, or Company's use of the Public Rights-of-Way, venue for such action shall lie exclusively in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

18. CONFERENCES.

At the request of either the City or Company, the City and Company shall meet at reasonable times and upon reasonable notice to discuss any aspect of this Agreement, Company's Wireless Infrastructure, Company's operations in the City, Company's transportation of data and information services, or Company's use of Public Rights-of-Way.

19. REVIEW OF COUNSEL.

The parties acknowledge that each Party and its counsel have had the opportunity to review and revise this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

20. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a final order entered by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. For purposes of this Agreement, a court order shall be final only to the extent that all available legal rights and remedies pertaining to such order, including, without limitation all available appeals, have been exhausted. In such an event, the City and Company agree that they shall amend or have amended this Agreement to comply with such final order entered by a court of competent jurisdiction.

21. FORCE MAJEURE.

In the event Company's performance of any of the terms, conditions, or obligations required by this Agreement is prevented by a cause or event that is not within Company's reasonable control, Company's non-performance shall be deemed excused for the period of such inability. Causes or events that are not within the Company's control shall include, but not be limited to, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, natural disasters, and declarations of disaster or emergency adopted in accordance with applicable law.

22. HEADINGS NOT CONTROLLING.

Headings and titles, other than those captions in Section 1, that are used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

EXHIBIT "A"

Company may only use the portions of the Public Rights-of-Way in the City specifically identified in this Exhibit.

SAMPLE

EXHIBIT "B"

In using the Public Rights-of-Way Company may install only the following equipment and facilities, which constitute the Wireless Infrastructure.

A single bundle of digital fiber optic or similar data-transmission line not to exceed a total of ___ inches in diameter.

One switch to interface the data line with other Company equipment, provided that such switch shall be located in the position identified in the attached schematic and provided further than such switch not exceed the following dimensions: ___ inches in width; ___ inches in length; and ___ inches in depth

SAMPLE